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## **FINAL NOTICE**

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To: **Mr David Richard Head**

Of: **73 Baker Street  
Potters Bar  
Hertfordshire  
EN6 2EX**

Date: **9 June 2010**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a requirement to pay a financial penalty.**

### **1. THE PENALTY**

- 1.1. The FSA gave you ("Mr Head") a Decision Notice on 8 June 2010 which notified you that pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £10,500 on you in respect of a breach of Statement of Principle 7 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("Statement of Principle") between 23 February 2007 and 12 March 2008 ("the relevant period").
- 1.2. You agreed to settle at an early stage of the FSA's investigation and you therefore qualified for a 30 per cent (Stage 1) discount under the FSA's executive settlement procedures. The FSA would have otherwise sought to impose a financial penalty of £15,000 on you.
- 1.3. You confirmed on 21 May 2010 that you will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).
- 1.4. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on you in the amount of £10,500.

## **2. REASONS FOR THE ACTION**

### **Background**

- 2.1. By the Decision Notice dated 8 June 2010 the FSA decided to impose a financial penalty on you for failing to comply with Statement of Principle 7 in performing the significant influence functions of controlled function (“CF”) 1 (Director) and CF8 (Apportionment and oversight) at FT Compliance Services Limited (“FTCS”) during the relevant period.
- 2.2. In summary, while performing significant influence functions you failed to take reasonable steps to ensure that FTCS complied with the relevant requirements and standards in respect of setting up systems and controls to ensure the compliance of your appointed representatives (“ARs”). In particular, you failed to:
  - (1) maintain adequate and appropriate systems and controls at FTCS to ensure that its ARs made suitable recommendations, in particular in its sale of Payment Protection Insurance (“PPI”); and
  - (2) take reasonable steps to ensure that FTCS’ compliance function was appropriate. Specifically you delegated responsibility for compliance to an individual and then failed to monitor the performance of that individual.
- 2.3. The FSA views your conduct as serious, meriting the imposition of a financial penalty because:
  - (1) you knew that the two of FTCS’ ARs had close links with a firm and individual previously disciplined by the FSA during the relevant period for failings in relation to PPI; and
  - (2) your failings exposed FTCS’ AR’s customers to the risk of purchasing unsuitable PPI.
- 2.4. The FSA has taken into account the following considerations, which are regarded as mitigating factors:
  - (1) you admitted your misconduct at an early stage of the FSA’s investigation and were open and cooperative during the investigation.

## **3. RELEVANT STATUTORY PROVISIONS AND GUIDANCE**

- 3.1. The relevant statutory provisions and regulatory requirements are attached at Annex A.

## **4. FACTS AND MATTERS RELIED ON**

### **Background**

*FTCS*

- 4.1. FTCS was authorised and regulated by the FSA from 23 February 2007 to 24 November 2009. During the relevant period, FTCS had 23 ARs.
- 4.2. From 23 February 2007, FTCS was authorised to carry on the following regulated activities in relation to designated investment business:
- (1) advising on investments (excluding pension transfers/opt outs);
  - (2) advising on regulated mortgage contracts;
  - (3) agreeing to carry on a regulated activity (insurance mediation);
  - (4) arranging deals in investments;
  - (5) arranging regulated mortgage contracts; and
  - (6) making arrangements (insurance mediation and regulated home finance).
- 4.3. FTCS operated as a network. FTCS' business model was to recruit independent financial advisers and firms and who, by virtue of its authorisation, could then become ARs of FTCS, allowing the ARs to conduct regulated activities using FTCS' authorisation.
- 4.4. A network is responsible for the suitability of the advice provided by its ARs and therefore has to ensure that there are appropriate systems and controls in place to ensure that any recommendations made by the ARs are suitable. In considering what systems and controls to put in place, a network should consider the risks posed by its ARs and take account of the ARs business models, regulatory history, the products it sells and the nature of its customer base.
- 4.5. You were FTCS' sole director and the person approved to hold controlled functions CF1 (director) and CF8 (Apportionment and oversight) during the relevant period. You were therefore solely responsible for the day-to-day running of FTCS and for ensuring its compliance with regulatory requirements.
- 4.6. You were instrumental in setting up FTCS' business and given sole responsibility for ensuring that FTCS' compliance function was appropriate. You were also responsible for identifying independent financial adviser firms and/or advisers that FTCS could then recruit to become ARs. As part of this process you recruited two ARs ("the relevant ARs") which were closely associated with a firm which had previously been disciplined by the FSA and were effectively controlled by an individual who had also been previously disciplined by the FSA.

#### **Assessment of risk posed by the relevant ARs**

- 4.7. You were aware that the relevant ARs were companies that had close links to the subjects of FSA Enforcement action in the recent past. In particular, you were aware that a person in a senior position at the relevant ARs had been disciplined by the FSA for regulatory breaches in relation to the mis-selling of PPI policies. You also knew that the relevant ARs' business model included making sales of PPI. The FSA considers that these facts should have placed you on heightened alert of the need to

ensure that there were robust systems and controls in place to mitigate the risk that the relevant ARs would mis-sell PPI.

- 4.8. However, despite being aware of these issues and therefore on notice that these firms may pose an increased compliance risk, you failed to take adequate steps to ensure that risk was mitigated. Instead, you relied on the fact that the relevant ARs had made changes to their systems and controls following the Enforcement action. You assumed that the relevant ARs systems and controls were likely to be adequate without making your own independent assessment.

*Inadequate systems and controls*

- 4.9. During the relevant period, FTCS had inadequate systems and controls to monitor and to ensure the suitability of the advice provided to customers by the relevant ARs.
- 4.10. In particular, you failed to establish and maintain appropriate systems and controls to ensure that the relevant ARs sold PPI only when it was suitable for the demands and needs of individual customers. You relied on the relevant ARs' existing systems and controls and limited your review of PPI cases to ensuring that they were subject to the relevant ARs existing systems and controls. For example, while there were checklists in place to record the results of client files you only checked that the checklist had the requisite ticks but did not examine the underlying documentation itself. Your 'tick box' approach meant that you did not identify any failings with the sale of PPI.
- 4.11. In addition, you delegated responsibility for compliance without taking any steps to ensure that you were delegating appropriately. You delegated authority for staff to undertake file reviews of the business being written by FTCS and its ARs but did not satisfy yourself as to the competence of the individual to whom you had delegated the task or monitor the performance of the individual.
- 4.12. Your failings created a significant risk that the relevant ARs would mis-sell PPI. The FSA has reviewed a number of PPI sales conducted by the relevant ARs and identified, while the sample was relatively small:
- (1) all the sales related to single-premium PPI;
  - (2) customers' eligibility for PPI was not appropriately considered prior to a recommendation being made;
  - (3) customers' circumstances were not appropriately considered to establish the suitability of PPI. In particular, the relevant ARs failed to consider:
    - (a) any existing medical conditions; and
    - (b) any existing insurance cover held by the customer; and
  - (4) there was no evidence to demonstrate that customers were advised that PPI could be obtained from another provider whose policy may be more suited to their needs. For example, another provider may have offered regular premium PPI which may have been more suitable for a particular customers circumstances.

## **5. ANALYSIS OF BREACHES**

5.1. By reason of the facts and matters referred to at paragraphs 4.1 to 4.12 above, the FSA considers that you failed to comply with Statement of Principle 7, in that you failed to:

- (1) maintain adequate and appropriate systems and controls at FTCS to ensure that its ARs made suitable recommendations, in particular in its sale of PPI; and
- (2) take reasonable steps to ensure that FTCS compliance function was appropriate; specifically you delegated responsibility for compliance to an individual and then failed to monitor the performance of that individual.

## **6. ANALYSIS OF PROPOSED SANCTION**

6.1. The FSA's policy on the imposition of financial penalties as at the date of this notice is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual ("ENF") in force during the relevant period until 27 August 2007 and Chapter 7 of the Enforcement Guide ("EG"), in force thereafter.

6.2. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

6.3. In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in the DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches, the risks created for customers of the relevant ARs and the need to send out a strong message of deterrence to other firms of the consequences of recommending a course of action to its customers without demonstrating the suitability of those recommendations.

6.4. DEPP 6.5.2 and, prior to August 2007, ENF, sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers that the following factors are particularly relevant in this case.

### **The nature, seriousness and impact of the breach in question**

6.5. The FSA has concluded that there was a risk to customers arising from the deficiencies in the monitoring of the quality of advice of ARs of FTCS in respect of PPI recommendation. This risk was identified by the FSA, not by you.

### **Whether the person on whom the penalty is to be imposed is an individual**

6.6. The FSA recognises that the financial penalty imposed on you is likely to have a significant impact on you as an individual.

**The size, financial resources and other circumstances of the person on whom the penalty is to be imposed**

- 6.7. The FSA has no evidence to suggest that you will be unable to pay this penalty.

**The amount of benefit gained or loss avoided**

- 6.8. You did not receive any income (salary or otherwise) from FTCS during the relevant period.

**Conduct following the breach**

- 6.9. The FSA has taken into account your cooperation with the FSA's investigation.

**Disciplinary record and compliance history**

- 6.10. The FSA has taken into account the fact that you have not been the subject of previous disciplinary action.

**Other action taken by the FSA**

- 6.11. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour.

**7. DECISION MAKERS**

- 7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

**8. IMPORTANT**

- 8.1. This Final Notice is given to you in accordance with section 390 of the Act.

**9. Manner of and time for Payment**

- 9.1. The financial penalty must be paid in full by Mr Head to the FSA by no later than [ ] June 2010, 14 days from the date of the Final Notice.

**10. If the financial penalty is not paid**

- 10.1. If all or any of the financial penalty is outstanding on 23 June 2010, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

**11. Publicity**

- 11.1. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

- 11.2. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **12. FSA contacts**

- 12.1. For more information concerning this matter generally, you should contact Mario Theodosiou (direct line: 020 7066 5914) of the Enforcement and Financial Crime Division of the FSA.

Signed.

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**Tom Spender**

**Head of Department**

**FSA Enforcement and Financial Crime Division**

## **ANNEX A**

### **1. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE**

#### **Statutory provisions**

- 1.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the reduction of financial crime, maintaining confidence in the financial system and the protection of consumers.

#### **Financial Penalty**

- 1.2. The FSA has the power, pursuant to section 66 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers an approved person has failed to comply with a Statement of Principle issued under section 64 of the Act.
- 1.3. The Statements of Principle and Code of Practice for Approved Persons ("APER") set out the Statements of Principle in respect of approved persons and conduct

which, in the opinion of the FSA, constitutes a failure to comply with them. They also describe the factors to be taken into account by the FSA in determining whether an approved person's conduct complies with a particular Statement of Principle.

- 1.4. APER 3.1.3G states that, when establishing compliance with, or breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 1.5. In this case, the FSA considers the most relevant Statement of Principle to be Statement of Principle 7 which requires that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.
- 1.6. The FSA's approach to taking disciplinary action is set out in Chapter 2 of EG. In deciding to take the proposed action the FSA has also had regard to the appropriate provisions of ENF which was in force until 27 August 2007, and therefore during part of the Relevant Period. Imposing financial penalties and public censures shows that the FSA is upholding regulatory standards and helps to maintain market confidence, promote public awareness of regulatory standards and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.
- 1.7. The FSA's policy on the imposition of financial penalties is set out in chapter 6 of DEPP which is a module of the FSA's Handbook of rules and guidance (and, previously, ENF). The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G & previously ENF 13.1.2).
- 1.8. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G (and previously ENF 12.3.3) sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:
  - (a) DEPP 6.2.1G (1) and previously EG 12.3.3(2): The nature, seriousness and impact of the suspected breach;
  - (b) DEPP 6.2.1G (2) and previously 12.3.3(3): The conduct of the person after the breach;
  - (c) DEPP 6.2.1G (3) and previously ENF 12.3.3(4): The previous disciplinary record and compliance history of the person;



- (d) DEPP 6.2.1G (4): FSA guidance and other published materials; and
  - (e) DEPP 6.2.1G (5) and previously ENF 12.3.3(5): Action taken by the FSA in previous similar cases.
- 1.9. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:
- (a) DEPP 6.5.2G (1): Deterrence;
  - (b) DEPP 6.5.2G (2) and previously ENF 13.3.3(1): The nature, seriousness and impact of the breach in question;
  - (c) DEPP 6.5.2G(4) and previously ENF 13.3.3(3): Whether the person on whom the penalty is to be imposed is an individual;
  - (d) DEPP 6.5.2G(5) and previously ENF 13.3.3(3): The size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
  - (e) DEPP 6.5.2G(6) and previously ENF 13.3.3(4): The amount of benefit gained or loss avoided;
  - (f) DEPP 6.5.2G(8) and previously ENF 13.3.3(5): Conduct following the breach;
  - (g) DEPP 6.5.2G(9) and previously ENF 13.3.3(6): Disciplinary record and compliance history;
  - (h) DEPP 6.5.2.G(10) and previously ENF 13.3.3(7): Other action taken by the FSA;
  - (i) DEPP 6.5.2G(12): FSA guidance and other published materials; and
  - (j) DEPP 6.5.2G(13) and previously ENF 13.3.3(9): The timing of any agreement as to the amount of the penalty.